



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, CAMPUS FILING AND PAYMENT COMPLIANCE
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Dretha Barham /s/ *Dretha Barham*
Director, Collection Policy

SUBJECT: Insolvency Processing of TC 604 Reversal Requests from
Automated Underreporter (AUR)

The purpose of this memorandum is to reissue interim guidance SBSE 05-0213-003, procedures for Insolvency caseworkers upon receipt of requests from Automated Under-Reporter (AUR) to reverse the Transaction Code (TC) 604 on a module closed on IDRS due to a bankruptcy discharge in a post-BAPCPA case. Please disseminate this information to all affected personnel within your organization.

BACKGROUND

The Service cannot assess a tax deficiency until after the taxpayer is given an appropriate opportunity to file a petition with the Tax Court for redetermination of the deficiency, pursuant to IRC § 6213(a). The running of the 90-day period for filing a Tax Court petition, pursuant to IRC § 6213(f)(1), is suspended while the taxpayer is prohibited by reason of the bankruptcy case from filing a petition, plus for 60 days thereafter. Under Bankruptcy Code § 362(a)(8), the automatic stay prohibits the commencement or continuation of a Tax Court case of an individual for a taxable period ending before the date of the bankruptcy order for relief. While individual taxpayers are in bankruptcy, the automatic stay prevents them from petitioning the Tax Court on pre-petition tax periods and tolls the period during which a petition with the Tax Court can be filed. A pre-petition tax period is a period that begins and ends prior to the bankruptcy petition date. The 90-day period begins or resumes 60 days after the automatic stay terminates. IRM 5.9.17.5.4(4) addresses actions to reinstate the TC290 due to an unagreed AUR deficiency reversed post-petition in a dismissed case.

Occasionally, AUR needs to assess a deficiency on a module abated by the bankruptcy discharge. IDRS Status 12 and a TC 971 AC 031 and subsequent TC 604 identify these modules.

Procedural Changes

In these instances, AUR will contact Insolvency to request reestablishment of the balance due to allow assessment of the new TC 290 on IDRS. ADS will not make a second discharge determination. This caseworker must reopen the case on AIS. After the AUR assessment has posted on IDRS, the caseworker will make a manual discharge determination and take appropriate closing actions. Case actions depend on the bankruptcy chapter and type of discharge.

See the following attachments for additional information on processing AUR requests for TC 604 reversals:

- Attachment 1, *Processing AUR Requests for TC 604 Reversals in Chapter 7 Individual Cases and Chapter 11 Individual, Chapter 12 Individual and Chapter 13 Cases with a Hardship Discharge*
- Attachment 2, *Processing AUR Requests for TC 604 Reversals When an Individual Has Received a Discharge Upon Completion of the Plan in a Chapter 13 Case*
- Attachment 3, *Processing AUR Requests for TC 604 Reversals When an Individual Has Received a Discharge Upon Completion of the Plan in a Chapter 11 or Chapter 12 Case*
- Attachment 4, *Determining Dischargeability of Non-Pecuniary Loss Penalties in all Discharged Cases Where the Underlying Tax Is Nondischargeable (Except the Chapter 13 Case with a Discharge Upon Completion of the Plan)*

If you have questions, please contact me, or a member of your staff may contact Deborah Fowler, Insolvency Tax Analyst or Patricia Murphy, Insolvency Tax Analyst.

cc: Director, Campus Compliance Services

Director, Field Collection

Director, ECS

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**PROCESSING AUR REQUESTS FOR TC 604 REVERSALS IN CHAPTER 7
INDIVIDUAL CASES AND CHAPTER 11 INDIVIDUAL, CHAPTER 12 INDIVIDUAL
AND CHAPTER 13 CASES WITH A HARDSHIP DISCHARGE**

STEP	IF...	THEN...
1.	Case has been closed on AIS,	<ul style="list-style-type: none"> Remove closure date from the Taxpayer Screen on AIS, Document request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2.	TC520s have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/insolvency_tools.htm
3.	Bankruptcy payments on the proposed deficiency were transferred to Excess Collections,	<ul style="list-style-type: none"> Prepare Form 8765 to move the payments back to the respective module(s), Input a TC 570 on the module(s) to prevent the payments from refunding and Schedule a follow-up to ensure all credits transfer.
4.	A TC 971 ac 031 and subsequent TC 604 posted to the module on IDRS to bring the module to St 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 ac 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.
5.	The requested TC 520(s), TC 605(s) and credit transfers have posted to IDRS,	<ul style="list-style-type: none"> Contact AUR and advise them to proceed with their assessment process, Ask them for an approximate assessment date, and Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.
6.	The assessment has not posted,	<ul style="list-style-type: none"> Contact AUR to question the delay, obtain a new estimated date of assessment and Schedule a new follow-up.
7.	The additional assessment has posted to IDRS: <ul style="list-style-type: none"> AUR did not assert 	The unagreed AUR deficiency that could not be assessed during the pendency of the bankruptcy because the debtor was prohibited from filing a

	<p>a fraud penalty when they assessed the additional tax on the return,</p> <ul style="list-style-type: none"> • The original balance due on the return (TC 150 balance) was abated in the prior closure of the case, and • The unreported income was not an attempt to willfully evade the tax, <p>NOTE: Consultation with Area Counsel may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.7 and IRM 5.9.17.7.1)</p>	<p>petition with the Tax Court, is a priority tax and is nondischargeable. (See USBC § 507(a)(8)(A)(iii)). The penalties may be dischargeable. See Attachment 4 to determine if the penalties are dischargeable.</p> <p>The caseworker must determine if the original assessment and additional assessments made prior to the bankruptcy are dischargeable:</p> <ol style="list-style-type: none"> 1. Did the taxpayer list IRS as a creditor in the case, or did the IRS otherwise have knowledge of the bankruptcy case in time to file a claim? No - go no further to determine dischargeability. The tax, penalty and interest are nondischargeable. Yes - continue to # 2. 2. Was the return due date, with extensions, within the 3 years prior to the bankruptcy petition date? Yes - go no further to determine dischargeability. The original tax and additional prepetition assessments and interest are nondischargeable. See Attachment 4 to determine if the penalties are dischargeable. No - proceed to # 3 3. Was the return filed late, within the 2 years prior to the petition date? Yes - go no further to determine dischargeability. The tax and interest on the original return and additional prepetition assessments are nondischargeable. See Attachment 4 to determine if the penalties are dischargeable. No - proceed to # 4. 4. Was the assessment date of the original assessment (TC150) within the 240 days prior to the petition date? Yes - the tax remaining and interest on the TC150 are nondischargeable. No - the tax and interest on the original assessment are dischargeable. See Attachment 4 to determine if the penalties on the original assessment are dischargeable. 5. Was the assessment date of the additional prepetition assessments (TC290) within the 240 days prior to the petition date? Yes - the tax and interest on the TC290
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		<p>are nondischargeable. No - the tax and interest are dischargeable. See Attachment 4 to determine if the penalties on the additional assessments posted prior to the bankruptcy are dischargeable.</p> <p>6. Was the original assessment a SFR? See SBSE-05-0613-0054 dated June 28, 2013 to determine dischargeability.</p> <p>CAUTION: When determining dischargeability of the three-year, two-year, or 240-day periods above, tolling may apply. Tolling may be applicable when the debtor had a prior bankruptcy case. Tolling of the three-year and 240-day periods may also be applicable when the debtor had a prior Collection Due Process case. The 240-day period may also be tolled when there was an OIC pending or in effect within the 240 days prior to the filing of the bankruptcy petition. (See IRM 5.9.13.19.3) Additionally, the debtor may not be entitled to a discharge in the current bankruptcy case when they received a discharge in a prior bankruptcy case. See IRM Exhibit 5.9.5-3 for limitations when the debtor received a discharge in a prior bankruptcy. If the debtor has received a discharge in the current case and received a discharge in a prior bankruptcy case, refer the case to Area Counsel for guidance. The Service may need to seek a revocation of the discharge in the current case.</p> <ul style="list-style-type: none"> • Request a TC 971 ac 031 when the tax, penalty and interest due on the original and additional assessment are dischargeable. • When only a portion of the tax, or only the penalties are dischargeable, request a TC 971 ac 033 on the module to identify a partial abatement due to the bankruptcy discharge on IDRS. • Prepare Form 3870 to request abatement of the dischargeable liabilities. There may be instances where the original assessment is dischargeable but the additional assessment is
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		<p>nondischargeable.</p> <ul style="list-style-type: none"> • Submit the F3870 to Centralized Case Processing or input the adjustments directly to IDRS based on local procedures. • Schedule a follow-up to monitor for posting of the abatements. • Request TC 520 reversal and IIP closure of the case on AIS once all adjustments have posted to IDRS.
8	AUR assessed a fraud penalty,	<ul style="list-style-type: none"> • Taxes and interest on the original and additional assessments are nondischargeable. See Attachment 4 to determine dischargeability of the penalties. • Request a TC 971 ac 033 on IDRS to identify a partial abatement on the module. • Prepare a F3870 to abate applicable penalties, • Schedule a follow-up to ensure penalty abatements post to IDRS. • Request TC 520 reversal and IIP closure of the case on AIS once all adjustments have posted to IDRS.

**PROCESSING AUR REQUESTS FOR TC 604 REVERSALS WHEN AN INDIVIDUAL
HAS RECEIVED A DISCHARGE UPON COMPLETION OF THE PLAN IN A
CHAPTER 13 CASE**

STEP	IF...	THEN...
1.	Case has been closed on AIS,	<ul style="list-style-type: none"> Remove closure date from the Taxpayer Screen on AIS, Document request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2.	TC520s have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/insolvency_tools.htm
3.	Bankruptcy payments on the proposed deficiency were moved to Excess Collections,	<ul style="list-style-type: none"> Prepare Form(s) 8765 to move the payments back to the respective module(s), Input a TC 570 on the module(s) to prevent the payments from refunding and Schedule a follow-up to ensure all credits transferred.
4.	A TC 971 ac 031 and subsequent TC 604 posted to the module on IDRS to bring the module to St 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 ac 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.
5.	The requested TC 520(s), TC 605(s) and credit transfers have posted to IDRS,	<ul style="list-style-type: none"> Contact AUR and advise them to proceed with their assessment process, Ask them for an approximate assessment date, and Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.
6.	The assessment has not posted,	<ul style="list-style-type: none"> Contact AUR to question the delay, obtain a new estimated date of assessment and Schedule a new follow-up.

7.	The additional assessment and payment transfers (if applicable) have posted to the module on IDRS,	<p>Determine if the remaining balance due on the module was discharged upon completion of the plan. Consider the following:</p> <ol style="list-style-type: none"> 1. Was IRS listed as a creditor in the case? Yes - tax, penalties and interest are dischargeable unless the liability meets one of the exceptions to discharge listed in # 2 through # 7. Proceed to # 2. No - the tax, penalties and interest are nondischargeable. 2. If IRS was added as a creditor in the case, or otherwise had knowledge of the case, did we have sufficient time to file a proof of claim prior to the bar date? Yes - the tax, penalties and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7. Proceed to # 3. No - the tax, penalties and interest are nondischargeable. Consultation with Area Counsel may be required when determining if the Service was adequately noticed in the case. 3. Was the return filed prior to the filing of the bankruptcy petition? Yes - the tax, penalties and interest are dischargeable unless the liability meets one of the exceptions to discharge listed in # 2 through # 7. Proceed to # 4. No - taxes and interest are nondischargeable. Penalties and interest on any assessed penalties are dischargeable. 4. Was the return filed late and within 2 years of the petition date? Yes - the tax and interest are nondischargeable. Penalties and interest on the penalties are dischargeable. No - the tax, penalty and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7. 5. Was the return fraudulent as evidenced by the presence of the fraud penalty (TC340)? Yes - the tax and interest are nondischargeable. The penalties and interest on the penalties are dischargeable. No - the tax, penalties and
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		<p>interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.</p> <p>6. Was the liability due to a Substitute for Return (SFR)? Yes - the tax and interest are nondischargeable. Penalties and interest on the penalties are dischargeable. (See SBSE-05-0613-0054 dated June 28, 2013 for more information regarding the dischargeability of SFRs) NO - the tax, penalties and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7.</p> <p>7. Did the debtor willfully attempt to evade or defeat the tax? Yes - the tax and interest are nondischargeable. The penalties and interest on the penalties are dischargeable. No - the tax, penalties and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 7. NOTE: Consultation with Area Counsel may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.7 and IRM 5.9.17.7.1)</p> <p>NOTE: When determining dischargeability, tolling may be applicable for returns that were filed late, within the two years prior to the bankruptcy petition, ONLY. The time in the prior bankruptcy case is tolled, without the 90-day add on period. See IRM 5.9.13.19.3.</p> <p>CAUTION: If the confirmed plan contains language that discharges all prepetition tax liabilities, contact Area Counsel because the plan, though incorrect, may be binding.</p>
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8.	The tax, penalties and interest are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 ac 031 to abate the module in full. • Schedule a follow-up to ensure the module has abated in full on IDRS, and • Request TC 520 reversal and IIP closure once all adjustments have posted to IDRS.
9.	The tax and interest are nondischargeable and the penalties are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 ac 033 to indicate a partial discharge on IDRS • Prepare a Form 3870 to abate the assessed penalties. (The interest on the penalties should systemically adjust when the penalty adjustments post to IDRS). • Send the Form 3870 to Centralized Case Processing to request abatement of penalties • Schedule a follow-up to ensure the adjustments have posted to IDRS, and • Request TC520 reversal and IIP closure once all adjustments have posted to IDRS.

**PROCESSING AUR REQUESTS FOR TC 604 REVERSALS WHEN AN INDIVIDUAL
HAS RECEIVED A DISCHARGE UPON COMPLETION OF THE PLAN IN A
CHAPTER 11 OR CHAPTER 12 CASE**

STEP	IF...	THEN...
1.	Case has been closed on AIS,	<ul style="list-style-type: none"> Remove closure date from the Taxpayer Screen on AIS, Document request from AUR to reverse the TC 604 to allow them to assess the deficiency in the AIS history, and Document which MFT(s) and Period(s) are included in the request from AUR.
2.	TC520s have been reversed,	Input a TC 520 on the module requiring the TC 604 reversal. The closing code depends on the type bankruptcy and the location. The TC 520 closing codes can be found at http://serp.enterprise.irs.gov/databases/who-where.dr/cio_assignment.dr/insolvency_tools.htm
3.	Bankruptcy payments on the proposed deficiency were moved to Excess Collections,	<ul style="list-style-type: none"> Prepare Form(s) 8765 to move the payments back to the respective module(s), Input a TC 570 on the module(s) to prevent the payments from refunding and Schedule a follow-up to ensure all credits transferred.
4.	A TC 971 ac 031 and subsequent TC 604 posted to the module on IDRS to bring the module to St 12,	<ul style="list-style-type: none"> Input or request input of a TC 972 ac 031, Request a 2 cycle posting delay (to ensure the TC 520 posts first), and Schedule a follow-up to ensure the TC 605 posts to IDRS, re-establishing the balance due.
5.	The requested TC 520(s), TC 605(s) and credit transfers have posted to IDRS,	<ul style="list-style-type: none"> Contact AUR and advise them to proceed with their assessment process, Ask them for an approximate assessment date, and Schedule a follow-up on AIS for 10 days after the estimated assessment date to see if the assessment has posted.
6.	The assessment has not posted,	<ul style="list-style-type: none"> Contact AUR to question the delay, obtain a new estimated date of assessment and Schedule a new follow-up.

7.	The additional assessment and payment transfers (if applicable) have posted to the module on IDRS,	<p>The unagreed AUR deficiency that could not be assessed during the pendency of the bankruptcy because the debtor was prohibited from filing a petition with the Tax Court is a priority tax and is nondischargeable. (See USBC § 507(a)(8)(A)(iii)). The penalties may be dischargeable. See Attachment 4 to determine if the penalties are dischargeable.</p> <p>Determine if the remaining balance due on the module due to the original tax on the return (TC150) or additional tax (TC290 or TC300) assessed prior to the bankruptcy was discharged upon completion of the plan. Consider the following:</p> <ol style="list-style-type: none"> 1. Was IRS listed as a creditor in the case? Yes - tax and interest are dischargeable unless the liability meets one of the exceptions to discharge listed in # 2 through # 8 below. Proceed to # 2. See Attachment 4 to determine if the penalties are dischargeable. No - the tax, penalties and interest are nondischargeable. 2. If IRS was added as a creditor in the case, or otherwise had knowledge of the case, did we have sufficient time to file a proof of claim prior to the bar date? Yes - the tax and interest are dischargeable unless the liability meets one of the other exceptions to discharge in # 2 through # 8. Proceed to # 3. No - the tax, penalties and interest are nondischargeable. See Attachment 4 to determine if the penalties are dischargeable. Consultation with Area Counsel may be required when determining if the Service was adequately noticed in the case. 3. Was the return due date, with extensions within the 3 years prior to the petition date? Yes - the tax and interest are nondischargeable. No - the tax and interest are dischargeable unless the liability meets one of the other exceptions to discharge listed in # 2 to # 8. See Attachment 4 to determine if the penalties are dischargeable.
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		<p>4. Was the return filed prior to the filing of the bankruptcy petition? Yes - the tax and interest are dischargeable unless the liability meets one of the other exceptions to discharge listed in # 2 through # 8. Proceed to # 5. No - taxes and interest are nondischargeable. See Attachment 4 to determine if the penalties are dischargeable.</p> <p>5. Was the return filed late and within 2 years of the petition date? Yes - the tax and interest are nondischargeable. No - the tax and interest are dischargeable unless the liability meets one of the other exceptions to discharge in # 2 through # 8. See Attachment 4 to determine if the penalties are dischargeable.</p> <p>6. Was the return fraudulent as evidenced by the presence of the fraud penalty (TC340)? Yes - the tax and interest are nondischargeable. No - the tax and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Attachment 4 to determine dischargeability of penalties.</p> <p>7. Was the liability due to a Substitute for Return (SFR)? Yes - the tax and interest are nondischargeable. (See SBSE-05-0613-0054 dated June 28, 2013 for more information regarding the dischargeability of SFRs) NO - the tax and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Attachment 4 to determine dischargeability of penalties</p> <p>8. Did the debtor willfully attempt to evade or defeat the tax? Yes - the tax and interest are nondischargeable. No - the tax and interest are dischargeable unless the liability meets one of the exceptions to discharge in # 2 through # 8. See Attachment 4 to determine dischargeability of penalties.</p> <p>NOTE: Consultation with Area Counsel</p>
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		<p>may be required for concurrence with assertions of the willful evasion exception to discharge. (See IRM 5.9.17.7 and IRM 5.9.17.7.1)</p> <p>NOTE: When determining dischargeability of the three-year, two-year, or 240-day periods above, tolling may apply. Tolling may be applicable when the debtor had a prior bankruptcy case. Tolling of the three-year and 240-day periods may also be applicable when the debtor had a prior Collection Due Process case. The 240-day period may also be tolled when there was an OIC pending or in effect within the 240 days prior to the filing of the bankruptcy petition. (See IRM 5.9.13.19.3)</p> <p>CAUTION: If the confirmed plan contains language that discharges all prepetition tax liabilities, consult Area Counsel; the Service may be bound by the improper plan.</p>
8.	The tax, penalties and interest are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 ac 031 to abate the module in full. • Schedule a follow-up to ensure the module has abated in full on IDRS, and • Request TC 520 reversal and IIP closure once all adjustments have posted to IDRS.
9.	The tax and interest are nondischargeable and the penalties are dischargeable,	<ul style="list-style-type: none"> • Request a TC 971 ac 033 to indicate a partial discharge on IDRS • Prepare a Form 3870 to abate the applicable penalties • Send the Form 3870 to Centralized Case Processing to request abatement of applicable penalties • Schedule a follow-up to ensure the adjustments have posted to IDRS, and • Request TC520 reversal and IIP closure once the adjustments have posted to

		IDRS.
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DETERMINING DISCHARGEABILITY OF NON-PECUNIARY LOSS PENALTIES IN
ALL DISCHARGED CASES WHERE THE UNDERLYING TAX IS
NONDISCHARGEABLE (EXCEPT THE CHAPTER 13 CASE WITH A DISCHARGE
UPON COMPLETION OF THE PLAN)

IF...	AND...	THEN...
The failure to pay penalty (TC270 or TC276) was assessed	The return due date was within 3 years of the petition date (do not include extensions)	The penalty is nondischargeable
The failure to pay penalty (TC270 or TC276) was assessed	The return due date was more than 3 years prior to the petition date (do not include extensions)	The penalty is dischargeable
The estimated tax penalty (TC170 or TC176) was assessed	The return due date was within 3 years of the petition date (do not include extensions)	The penalty is nondischargeable
The estimated tax penalty (TC170 or TC176) was assessed	The return due date was more than 3 years prior to the petition date (do not include extensions)	The penalty is dischargeable
The failure to file penalty (TC160 or TC166) was assessed	The return due date or extended due date was within 3 years of the petition date	The penalty is nondischargeable
The failure to file penalty (TC160 or TC166) was assessed	The return due date or extended due date was more than 3 years prior to the petition date	The penalty is dischargeable
The fraud penalty (TC320) was assessed	The return was filed within 3 years of the petition date	The penalty is nondischargeable
The fraud penalty (TC320) was assessed	The return was filed more than 3 years prior to the petition date	The penalty is dischargeable
The negligence penalty (TC350) was assessed	The return was filed within 3 years of the petition date	The penalty is nondischargeable
The negligence penalty (TC350) was assessed	The return was filed more than 3 years prior to the petition date	The penalty is dischargeable
The substantial underpayment of tax penalty	The return was filed within three years of the petition	The penalty is nondischargeable if the underlying tax is

(TC240) was assessed	date	nondischargeable.
The substantial underpayment of tax penalty (TC240) was assessed	The return was filed more than 3 years prior to the petition date	The penalty is dischargeable